

State Resources

Minnesota Department of
Human Rights
<https://mn.gov/mdhr/>

Reviewing Your

Minnesota
Job Offer

Federal Resources

Equal Employment
Opportunity Commission
<http://www.eeoc.gov>

Does your job offer require that you sign a non-compete agreement?

Non-compete agreements are an agreement by which an employee agrees not to enter into competition with the employer during or after the conclusion of the employment relationship. Non-compete agreements are commonly enforced under Minnesota law in many circumstances, as long as the agreement protects a legitimate employer interest and is reasonable in substantive scope, duration and geographic territory. The reasonableness of a non-compete agreement is dependent on the type of industry of the employer and the employee's position, and analyzed by courts on a case-by-case basis. In the event of a dispute, a court would make the ultimate decision regarding what is reasonable and has the power to "blue pencil" the agreement, meaning to narrow the non-compete limits to the minimum extent necessary to make it reasonable. Furthermore, for a non-compete agreement to be valid in Minnesota, it must be supported by adequate consideration, meaning that each party is exchanging something of value within the agreement. When an employer requires a non-compete agreement at the outset of the employment relationship--before the employee's first day of work--courts generally find there has been an exchange of consideration. However, in the case of an existing employee, consideration beyond the continuation of employment is generally needed if the employer seeks a covenant not to compete after the employment relationship has already commenced. Additional consideration from the employer can come in the form of a raise, bonus, promotion, or some other benefit that the employee may not have obtained in the absence of the non-compete agreement.

Does your salary match the salary of your co-workers?

Minnesota law does not require that private employers post compensation information for its employees or provide an applicant with a pay scale for the position offered. However, nothing prohibits an employee from asking their employer for this information or discussing compensation with co-workers. Pursuant to Minnesota Statute Section 181.961, an employee is entitled to receive a copy of their personnel record upon written request, which could contain information concerning employer considerations for compensation. Under applicable law, including the National Labor Relations Act, employers may not prohibit employees from discussing compensation with co-workers. Minnesota's Equal Pay Law prohibits employers from paying female employees at a rate less than what male employees receive for equal work or for jobs which require equal skill, effort, responsibility, and which are performed under similar working conditions. Both Minnesota state law and federal law prohibit discrimination in pay based on an employee's membership in a protected class, including, but not limited to, sex, race, age (40+), national origin and disability status. Additionally, an employer may not retaliate against an employee by reducing an employee's pay in retaliation for engaging in a legally protected activity such as making a complaint of discrimination, engaging in protected whistleblower conduct, or taking protected leave.

Assuming your employment is "at will," can you negotiate for contractual protections?

Minnesota is an "at will" employment state. This means that an employee may be terminated at any time, for any reason, with or without cause. However, there are multiple exceptions that Minnesota law provides as illegal reasons to be terminated. For example, the Minnesota Human Rights Act prohibits an employer from discharging an employee because of the employee's race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age. Minnesota law also prohibits an employer from engaging in retaliation against an employee for engaging in a legally protected activity, such as opposing discrimination, engaging in protected whistleblower conduct, and taking protected leave. Employees can try to negotiate for additional protections to limit the "at will" nature of their employment by contract, such as seeking contractual provisions requiring the employer demonstrate "cause" for termination or entitling the employee to a severance payment upon termination. However, it is unusual for employers to negotiate such terms except for executive level employees or employees with unique skills.

Have you properly excluded your individual inventions prior to accepting your job offer?

As a condition of employment, an employer may require an employee sign an agreement providing that any inventions developed by the employee during the employment relationship are the property of the employer and that the employee assigns all rights to such inventions to the employer. Generally the employee is provided an opportunity to identify within the written agreement prior inventions or other intellectual property to which they seek to retain ownership rights and exclude from the agreement. While an agreement can be negotiated to ensure protection of inventions or intellectual property an employee worked on before, during or after the employment relationship, it can be important for an employee to obtain legal counsel to review an agreement involving assignment of their inventions and intellectual property to an employer.

Does your job offer require that you sign a forced arbitration agreement?

It is increasingly common for employers to require employees sign arbitration agreements as a condition of employment. Entering into such an agreement can result in a waiver of the employee's ability to pursue legal claims in a court of law, waiver of the right to a trial by jury, and waiver of the right to pursue claims in a class or collective action. In most cases, arbitration agreements and anti-class action provisions can be enforced and restrict the full range of legal rights and procedural mechanisms that may be otherwise available to an employee in a court of law. Nonetheless, these agreements--like any agreement--can be challenged on the basis of general contract defenses such as unconscionability, duress, and fraud. Some employer arbitration agreements include an "opt out" provision which allows the employee to opt-out of the arbitration process, which is generally a good idea if one is given the option. Advocacy to end forced arbitration of sexual harassment and assault claims has resulted in changes in the law that now restrict an employer's ability to enforce an arbitration agreement against employees alleging sexual harassment or sexual assault and likely related claims. As a result, an employee may be able to pursue sexual harassment and sexual assault claims in a court of law, despite having previously signed an arbitration agreement.

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